IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8035 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EQUINOX SEMICONDUCTOR LTD

Versus

G I D C

Appearance:

1. Special Civil Application No. 8035 of 1993

MR BH BHAGAT for Petitioner No. 1-2

MR YN OZA for Petitioner No. 1-2

MR TEJAS BAROT FOR M/S TRIVEDI & GUPTA for Respondent NoS. 1 AND 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 24/02/2004

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India challenging the legality and the validity of the order dated 22.4.1992 passed by the respondents calling upon the petitioners to hand over possession of the plot allotted to the petitioners. The petitioners have also challenged the order of recovery of Rs.7,25,960.00 from the petitioners by way of alleged outstanding dues payable to the respondent-Corporation. The petitioners have stated that they had made an application to the respondent -Corporation for allotment of a plot and pursuant to the said application, plot No.E1/Part II GIDC Electronics Estate at Gandhinagar, was allotted to the petitioners after following necessary formalities.

2. The petitioners have prayed for direction of quashing and setting aside the order dated 22.4.1992 and directing the respondents to restore possession of plot E-1/Part II, GIDC Electronics Estate, Gandhingar, and in alternative, to direct the respondents to refund an amount of Rs,.11,65,944.00 payable to the petitioners with interest at the rate of 24% per annum and give back the possession of the building materials lying in the plot.

3. Mr.Gupta, learned advocate appearing for the petitioners submits that the plot in question is taken back by the respondent- Corporation without any order of panchnama or without issuing further notice to the petitioners and that too in a very short time of two to three days. The petitioners have further stated that a new policy of voluntary surrender of plot has come into effect from 1.3.1992 to 30.9.1992 and the said policy was not circulated to the petitioners nor they have given any option to voluntarily surrender the plot in question under the new policy. It is further stated that inspite of letter of the petitioners dated 19.6.1992 wanting to surrender the plot voluntarily, the respondent-Corporation neither approved nor rejected the said proposal of the petitioners. It is further stated that action of resumption of possession of the plot under Section 5[2] of the Gujarat Public Premises [Eviction of Unauthorized Occupants] Act is bad in in law as well as the action of recovery of Rs.7,25,960.00 is illegal and unjust. Mr.Gupta has further submitted that the respondents have acted arbitrarily and in high-handed manner in not giving any time to the petitioners inspite of the letter dated 28.4.1992. It is further stated that the respondent-Corporation has acted in discriminatory manner as the similarly situated allottes were either given the possession back or they were given back the

total amount of money paid to the respondent-Corporation. Mr.Gupta has further pointed out that in the case of M/s Paramount Spring vs. GIDC and M/s Paramount Plastics Vs. GIDC, despite substantial outstanding dues by the said parties, no action was taken by the respondent-Corporation and even in the case of Essen Electronics and Tolaram Electronics, the amount of outstanding dues was quite substantial, no eviction proceedings were taken by the respondent-Corporation. It is further stated that the action of resumption of possession of the plot as well as recovery of alleged outstanding dues by the respondent- Corporation from the petitioners is not supported by any cogent and justifiable grounds, and in absence of any grounds for initiating action, the same is arbitrary, bad, illegal and violative of Article 14 of the Constitution of India, and, therefore, the same is required to be quashed and set aside.

4. Mr.Tejas Barot, learned advocate appearing for M/s Trivedi and Gupta for respondents no.1 and 2 submits that the present petition filed by the petitioners is not maintainable as no legal or fundamental right of the petitioners was either infringed or violated by the Corporation. He has further submitted that even otherwise the petition deserves to be dismissed as the controversy involved in the matter is of such which may require the Court to decide various disputed questions of fact and that would be decided by the competent civil court. It is further submitted that for redressal of the grievance of the petitioners was regarding resumption of possession of the plot as well as the recovery of the outstanding dues, the petitioners have got an alternative and efficacious remedy before the appropriate forum under the provisions of Gujarat Public Premises [Eviction of Unauthorized Occupants] Act, 1972 and on that ground also, the petition is required to be dismissed. Mr.Barot has further submitted that the petitioners have not complied with the necessary requirements and the provisions of Gujarat Industrial Development Act and, therefore, the petition should be dismissed. He has further submitted that the petition involves the implementation and enforcement of the terms and conditions of the contract/agreement entered into between the parties, and hence, it does not require any interference by this Court under the extraordinary writ jurisdiction of Article 226 of the Constitution of India.

5. It is submitted that the resumption of the possession of the plot in question as well the recovery of the outstanding dues are absolutely legal and proper

and the orders passed in this regard are absolutely of an administrative nature and the same have been passed considering all the relevant facts and circumstances of the case and keeping in mind the issue of protecting the administrative interest of the respondent Corporation. It is stated that one of the prayers made by the petitioners relates to restoration of possession of plot of the respondent- Corporation which has already been allotted to some third party after its resumption from the petitioners and after having followed due process of law and after following necessary procedure under the provisions of the said Act. It is submitted that in accordance with the policy of the respondent Cooperation, the petitioners are required to pay an amount of Rs.18,64,095/-. Since the petitioners have already paid an amount of Rs.11,65,944/, the outstanding dues of the petitioners are to the tune of Rs.6,98,151/-. As the aforesaid outstanding dues were not paid by the petitioners, the respondent- Corporation has passed the final order of recovery of outstanding dues after resumption of possession of the plot from the petitioners. He has submitted that the orders have been passed in accordance with the provisions of the said Act after giving a reasonable opportunity of being heard to the petitioners.

6. Mr.Barot has further relied on the decision of this Court in Special Civil Application No.7254 of 1992 decided on 01.8.2003 [Coram: A.L.Dave,, J] in the case of Shresthmulti Metal Ind. Pvt. Ltd. Vs. Gujarat Industrial Development Corporation, wherein after going through the facts and circumstances of that case, and after evaluating the terms of contract and after considering the statutory provisions, this Court has come to the conclusion that it would not be proper for this court to grant any indulgence to the petitioners in exercise of powers under Article 226 of the Constitution of India. The Court has further held that even for the contention regarding money received by GIDC through reallotment, a petition cannot be entertained as it would call for interpretation, identification and adjudication of contractual rights and obligation on the basis of several factual aspects over which there may be disputes between the parties. The Court has further observed that it would be a question whether the petitioner can have any claim over the amount realized by GIDC while reallotment of the plot to the 3rd party. The Court has refused to interfere with the matter and while rejecting the petition, it was made clear that the dismissal of the petition may not be taken to mean any rejection of any civil rights that the petitioner may assert before the

appropriate forum and the appropriate forum will decide the same uninfluenced by the dismissal of the petition.

7. After considering the submissions and contentions of the respective parties and after having gone through the pleadings made by them in the memo of petition as well as in affidavit in reply and after having gone through the contents of the agreement executed between the parties, the Court is of the opinion that the impugned orders passed by the respondents- Corporation do not call for any interference by this Court while exercising its writ jurisdiction under Article 226 of the Constitution. The impugned order was passed on 22.4.1992 prior to passing such order, requisite notice was issued by the respondent Corporation directing the petitioner to pay the outstanding dues. The petitioners however, failed to comply with the said notice and did not make the payments. As per the terms of the agreement, the respondent Corporation was entitled to initiate the eviction proceedings against the petitioners in case of failure of payment of outstanding dues to the Corporation and the respondent Corporation is also entitled to recover the balance dues, even after taking back the possession of the properties given to the petitioners. There is no dispute about the fact that the petitioners have not paid the regular installments and even at the time of giving possession, the amount of Rs.7,25,960.00 was outstanding from the petitioners.

8. As far as the contention regarding voluntary surrender of the plot in question is concerned, the petitioners relied on the circular dated 09.4.1992 issued by the respondent Corporation with regard to surrender policy for vacant plot. However, the policy itself makes it clear that the existing policy for surrender of plots is governed by the policy circular dated 14.5.1987 and, thereafter, this new policy was introduced by circular dated 09.4.1992. It is also made clear in this circular that in respect of the unutilized open plot, the allottee would be at liberty to surrender the plot till the moment the Corporation resumes possession through eviction proceedings under Section 5 (2) of the said Act. It was further made clear that the allottee would be eligible for refund of amount paid by him towards down payment, installments, IDB service charges, NA assessment and DER along with interest at 9% per annum on the capital amount paid by him from time time and from the date of down payment and instalment till the date of surrender. However, this clause would not come to the rescue of the petitioners as admittedly in this case, notice for recovery was issued by the respondent -Corporation much

earlier, the petitioners have not made any payment pursuant to the said notice. It is true that new surrender policy was in force during period from 1.3.1992 to 30.9.1992 but that would be applicable in those cases where the allottee himself comes forward for surrender of the plots and not to those cases where the recovery notice were issued, payments were not made and eviction proceeding were also initiated. The petitioners, therefore, could not take shelter of this circular. Even otherwise, the land in question, after its resumption of possession by the respondents, was allotted to the third party and the third party right has already been created in the said plot of land. The petitioners, therefore, cannot claim any relief with regard to the reallotment of the said plot.

9. So far as the petitioners' challenge to the recovery of outstanding dues and alternative prayer with regard to the refund of the amount which was already paid to the respondent Corporation is concerned, this Court restrains itself from expressing any opinion on this issue because it is open for the petitioners to raise and agitate this issue before the competent court as it falls in the realm of contractual matter, and this Court would not like to go into the said questions and would not render any decision on this point as expressing any opinion or rendering any decision on this point either one way or other other, would definitely affect the interest of the parties. Hence, relying on the earlier judgment of this Court referred to hereinabove, this Court also holds that while not entertaining the claim of the petitioners in this petition with regard to quashing of recovery order and granting of refund of amount paid may not be taken to mean rejection of any civil right that the petitioners may assert before the appropriate Court.

10. With the above observations, this petition is dismissed. Rule is discharged without any order as to costs.

[K.A.PUJ, J]

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